

Legal Compliance for Incorporating Startup
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Lecture – 04
Comparative Analysis of Compliance Cost

I welcome you in the 4th lecture of fundamentals regarding the legal compliance for incorporating startup. And in these lecture I will more concentrate on comparative analysis of incorporation cost or compliance cost.

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Comparison between Business Forms

Form	Pre-Formation Documentation Cost	Minimum Capital Requirement	Filing Cost
Proprietorship	–	–	Not for Registration
Partnership	Yes	–	Registration Fee and Stamp Duty
Limited Liability Partnership (LLP)	Yes	–	Registration Fee and Stamp Duty



Until now what I told you about what are the business forms, and then I talked with you regarding comparative compliance requirement, of our different business form. And now I am going to talk about that what are the cost you require to incur while incorporating your or registering or forming your start up organization. And as I have told you in the last case, that compliance should also be one of the criteria, for your decision of choosing business form.

Similarly, the cost for forming the business form, or choosing the business form should be other criteria for your decision making, of choice of business organization in the

beginning of your start up, or when you are starting your start up. Now again I put it into a tabular form, in the right column you will find I have named the type of business form, like I have named it proprietorship partnership LLP's, and in the other from left to right, I put another three column, and the first one is relating to pre formation documentation cost, then the second one, is mini minimum capital requirement, and third one is failing cost.

Now, if your business form is simple, you incur less cost. If your business form is formal, and more formal, then you incur more cost. But at the sometime if you remember my first lecture, I have said in some of the segment, you do not have much choice relating to the form of business, because that particular set over regulated prescribe particular business form, which you need to have if you want to start up. Having said that there is a large area, or large number of startup can incorporated with any kind of a business form, because a large area where there is a no as such prescription that you have to choose a particular business form.

So, if you are incorporating your form, as a proprietorship form, then possibly you do not have any cost for preparation of the document. Similarly you do not require having any minimal capital; legally requiring for the proprietorship. So, even you can start your business without any capital, or even as do as 100 rupees, but you need to spend some money for another compliance's, which I am going to do it in my next lecture other compliance's like you might need to go for local registration, or registration with the local government local government here I mean municipalities.

Sometimes may be in Nagar Vikas Nigam, sometimes may be with the Panchayath's. So, this is depending on who is the local government and who has the authority to give you the license, of doing the business in that particular locality. Now there is a different state legislation, we will find on these particular thing. Sometimes we will find these particular power given under the municipality here sometimes, it is comes under sobs and establishment act. So, must. So, forth it is quiet localized.

So, if you look in to the partnership, in case of the partnership you need to do documentation, in the pre registration. To be more precise, as I have discussed in my last

lecture that you need to have a partnership agreement, and for drafting of the partnership agreement, you need to higher any professional, or even you can do yourself, but it is always advisable, that you should you should take a professional advice and preparation of this particular document the professional might charge some fees.

At the same time when you are going to take this particular document to the register of the partner, he might ask you to file additional information, based on the state laws, and it varies with the different states. And you know in generally the partnership do not require to have any minimal capital to be mentioned, in that particular ah, mention minimal capital for starting the business. So, similarly if you are talking about the limited liability partnership, you need to have pre formation document, and for preparing this particular document again you need to have a professional advice, and you need to file number of forms.

In case of LLP there is important filing relating to the designated partner. You need to get you know partners identification number. So, there is a number of compliance. So, you have some kind of fees need to be paid at the time of the filing also, but there is a no minimum capital requirement in case of LLP too. So, in case of the LLP you also require to have require to spend some amount for incorporating LLP, and to be frank with you this cost is little higher than the partners formation of the partnership.

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Form	Pre-formation Documentation Cost	Minimum Capital Requirement	Filing Cost
Society	Yes	—	Registration Fee and Stamp Duty
Cooperatives	Yes	—	Registration Fee and Stamp Duty
Trust	Yes	— Corporation	Registration Fee and Stamp Duty

Now, let me take it you to the next category that is society. In case of the society again you need to make memorandum of association, and preparation of memorandum association you need professional advice, and though you are not require to have minimum capital for the society, but you need to pay the registration fees, as well as the stamp duty to if it is make prescribed by the by that you know state or by that particular legislates. But in case of the society again the fees has not very high, in compare I think in case of LLP the cost is more than then the society.

Now, in case of the cooperative again you need to have a formation document. So, you need to develop the incorporation document at the same time the bylaws. And there you need to have again a professional service. And you need to incur some cost for preparation of these particular document and filing of these particular forms, with the respective regulators. And while you are registering your organizations again you need to pay the registration fees and the stamp duty, but at the same time you are not require to have any minimal capital require for formation of cooperatives.

Now, please to remember, which I have told you in my last lecture too, that these cooperatives are basically governed by the state laws. So, there might be a difference in the charges, some state might be higher charges, some state might have a lower charges,

some state have are more flexibility in a documentation and you know filing, where as in some case some state have a stringent requirement for filing, some state even you know restrict some of the business only can be carried out by this cooperative, other cannot be carried out by the cooperatives.

The next one is to trust; as I have told you in my last lecture to the trust is not really quiet you know accepted form of business in India. But never the less please do use that trust for the purpose of the business and in case of the trust again you need to create a cluster date. And in the trust you for preparation of the translate you need some professional services. And then if you are taking the professional services you need to incur the cost for that. In case of the trust there is a no minimal capital requirement. But trust is always best on some corpus. And the corpus is quite sufficient to benefit the beneficiaries; that means, the capital in case of the trust is quite in amount in compare to other form of a business organization and further matter in case of the trust again you need to have registration fees, and you need to pay stamp duty. And in some state the stamp duty is quite high for the registration of the trust. Again it is depending on which kind of a trust you are registering, you are going for private trust, or I will go for public trust.

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Form	Pre-formation Documentation Cost	Minimum Capital Requirement	Filing Cost
One Person Company / Private Limited Company / Public Limited Company (Non-listed & Listed)	Yes	Yes	Registration Fee and Stamp Duty

The last one which I want to talk with you is the companies. In case of the companies I have dealt with all the companies together. So, I am going to talk the one man one person company, or limited liability company, or public limited company non-listed, as well as the listed. And you need to spend quite some for preparation of the formation document or incorporation document of the company. And as I have told you, you know last lecture also the company is more of a formal organization.

So, in that case you should be quite careful about the preparation of the formation document, or the constitutional document. Which is popularly known as memorandum of association and article of the association or MOA or AOA, because there you need to put the objective clause, and while your drafting the objective clause you should be careful, the ambit of the objective clause. Because if you have a very narrow objective clause then you might face difficulty in your business expansion, or additional business you wanted to start with your main business, because if it is not mentioned within the objective clause, then it might fall within the domain of ultra virus. And if it is the ultra virus then in that case it is not enforceable by law. Then you need to have a capital clause, you need to have a liability clause, in mentioned in case of the company because you know, public limited company the liability is something different than that of a public or private unlimited company.

The last one is the companies, and I have dealt with all the companies together. That is one person company, private limited company, public limited company, listed and non listed. Now as I told you earlier, that company is a more formal business form. So, you need to careful while you are drafting, the incorporation document, or formation document, or constitution of the company, that is memorandum of association or article of association, or in sort they known as MOA or AOA. Because there is several clauses which are quite important, and if it is not been drafted properly, it might hamper your business in the future. One of them is objective clause I have mentioned in my earlier lecture too, and whatever you mentioned in the objective clause you need to carry forward your business within that particular ambit.

You cannot do business, which is not mentioned within the objective clause. So, if you want to diversify your business, if you wanted to start ancillary business in addition to

your main business, then that should be included in your objective clause. You need to have a liability clause in the memorandum, and there you need to mention what kind of liability the member will have in the cooperation, or in the company. Are you going to go for limited liability or unlimited liability, you need to mention the capital, how much capital you need to start that particular business, or what should be what should be the authorized capital of that particular company.

You need to elaborate the companies function in article of association, you need to elaborate in the article of association about the relationship between the shareholders of the company, you need to elaborate the directors' duty, and you need to elaborate the internal functional mechanism in AOA of the company. So, to precise it is bit of a complex documentation in case of the company. And you need to have professional service for these particular purposes. And to the attain you need to spend some money for preparation of this particular document. I have also mentioned in my last lecture that you need to get a director identification number, din, because if you do not have a din, and you are not mentioning that who is going to be a director in the post incorporation; that means, once the company is incorporated, the register of the company is not going to issue the incorporation certificate.

So, you need to also choose the name of company, because if you want the particular name you might not get that particular name. So, you need to give a number of options to the ROC. So, these all these particular thing you need some kind of a professional expertized, though nowadays everything is online, even you can use these searching of the name online, you can file the document online, you can pay the fees online, but doing oneself is bit of a complexity, and that is a reason you need to have professional services.

Now, in case of regarding the minimum capital, you need to mention in case of the company, that how much people are subscribing while, how many shares are subscribing while the company is registering, with register of the company. So, the subscription need to be mentioned in the MOI of the company, and who are the people who are subscribing the shares of these particular company, that is need to be mentioned. So, basically the minimal capital is needed to be mentioned in case in AOA. Apart from that statute emphasis on the minimum capital, like it is a private company then you need to have at

least 1 lakh minimal capital at the time of registration. So, the requirement differs with the public limited company, requirement differs if it is the other form of the company.

So, the statute prescribed that there should be are minimum requirement, for capital. And at the same time, as I have told you even in my earlier lecture, that while your submitting all the document for registering the company you would need to pay the registration fees, and this is quite a hefty amount. And this registration fees is depend on, what is your authorized capital of your company. Bigger the authorized capital, bigger the registration fees; sometimes you need to have a good authorize capital, because if you want to applying to a financial institution for the funding. Then you need to have good authorized capital.

So, to summarize the entire talk, I will once again suggest you, that the initial expenditure for formation of the company should be one of the criteria, for you to choose suitable business form. Because if you are choosing business form where you need to spend more money, then you might find initial difficulty, for difficulty for formation of the company. So, again I will suggest you that you should have a strategy in place, and you accordingly choose the business form, which will be suitable for your business based, on the expenditure or the cost, which will incur for the formation of the business.

Thank you.